

County of Hampshire

31
Served on thirty
days against Sullivan
and against Pollock
on 30 days at pier
& shore

PETITION and COMPLAINT

Sir *Michael Stewart* of *Blackhall* Baronet, and *William Cuninghame* of *Craigend* Esq;

THAT your Petitioners, under their legal Character of Freeholders of the County of *Renfrew*, and as such standing upon the Roll of Freeholders of said County, have an unquestionable Title, in terms of the Statute of the 16th of the King, to complain to your Lordships, in this summary Manner, of any Wrong that may be done by the Freeholders of said County at their last *Michaelmas* Meeting; and it is in order to obtain that Redress, in the Particulars to be hereafter mentioned, that this Complaint is preferred.

At the last *Michaelmas* Meeting of the Freeholders of the County of *Renfrew*, a Claim was presented for Capt. *John Pollock*, Brother to Sir *Robert Pollock* of that Ilk, for being admitted on the Roll of Freeholders of said County.

And the Title for him produced was a Charter of Resignation under the Great Seal in his favour, of the just and equal half, *pro indiviso*, of all and hail the Twenty Pound Land of *Overpollock*, proceeding upon the Procuratory of Resignation contained in a Disposition by his Brother Sir Robert Pollock to

him

If whether a right
to the half of a ~~Block~~
Land by the valuation
gives right to the cla
ment to be inrolled with
out a regular Division
of the whole 2.

24 Whether a corpo-
ration or community
have right to be in-
roled ^{if may vote} to delegate

Capt. John
Pollock.

him of the aforesaid just and equal half, *pro indiviso*, of all and haill the aforesaid Twenty Pound Land of *Overpollock*.

And for instructing that these Lands were rated in the Cess-books at *L. 400 Scots* of valued Rent and upwards, Reference was made to the Valuation-book of that County, then lying upon the Table, from which it appeared, that the whole *L. 20* Land of *Overpollock* were valued and paid Cess at the Rate of *L. 1000 Scots*.

It was objected by your Petitioner Sir *Michael Stewart*, That Capt. *Pollock's* Infeftment in the just and equal half, *pro indiviso*, of these Lands, was no legal Qualification, as no Evidence was produced of that *cumulo* Valuation's being divided.

It was answered for Capt. *Pollock*, That as the Law only requires *L. 400* of Valuation, and as he stands infeft in the just and equal half, *pro indiviso*, of Lands to the Extent of *L. 1000 Scots* of Valuation, which is so much more than the Law requires, he is therefore intitled to be inrolled. And the Meeting inrolled him accordingly.

The Petitioners are advised, that this Inrollment was improper and illegal in a double respect: 1st, That it proceeds upon an undivided Property; 2^{dly}, That the Valuation is also undivided: Either of which, the Petitioners apprehend, was sufficient, in point of Law, for rejecting this Claim.

The Right of Freehold, and the Privileges which the Law has annexed thereto, of being thereby qualified either to be elected or to elect a Commissioner to Parliament, in the Nature of Things supposes a certain Estate, either of Property or Superiority, in which the Claimant stands vest and seised, and of which he must also be in the Possession.

None of these Requisites can apply to the Case of an undivided Property, whether it be by Inheritance as Heirs-portioners, or by Purchase as joint Proprietors. Where that happens to be the Case, neither of them can say, that any particular Estate be ongs to them either in Property or Possession. The whole
and



and every Part belongs to each, and, as Lawyers express it, *concurfu faciunt partes*; but while it remains undivided, neither of them have any particular Estate.

And that your Petitioners may not be thought to plead this Point without proper Authority, they beg Liberty to refer to that Clause of the Statute 1681, which ascertains the Qualifications of Freeholders; whereby it is *inter alia* enacted, "That Apprisers or Adjudgers shall have no Vote in said Elections during the legal Reversion; and that after the expiring thereof, the Appriser or Adjudger first infeft shall only have a Vote, and no other Appriser or Adjudger coming in *pari passu* till their Shares be divided."

This seems to be an Authority in point. Apprisings and Adjudications within Year and Day of the first effectual one, are by the Statute 1661 brought in *pari passu*, as if one Infeftment had been taken upon the whole. These are legal Conveyances to the several Apprisers or Adjudgers *pro indiviso*: The whole Estate is adjudged to each, which upon a Division falls to be distributed among them into so many Shares. And therefore, though the Law in that Case has been so indulgent as to allow the Appriser or Adjudger first infeft, to enjoy this Privilege of a Freehold after Expiry of the Legal, it excludes all others, though coming in *pari passu*, until their Shares be divided; upon this plain Principle, That an undivided Property is not the Estate of any one, but of the whole jointly.

And upon the same Principle, the *cumulo* Valuation of this undivided Property affords a separate Objection to this Claim. Capt. Pollock's proper Estate has no Valuation: He has no Estate that can be valued, while the Property remains *pro indiviso* with him and his Brother. The Division of the Property, in the Nature of Things, must precede the Division of the Valuation. It is the Estate itself, not the Person, that is to be rated and pay Cefs according to such a Valuation: So that neither an undivided

undivided Property, nor an undivided Valuation, can answer the Description and Purview of the Law, in the Qualification thereby required for intitling any Person to be entered upon the Roll of Freeholders.

And it is no good Answer to say, That as the total Valuation is *L. 1000 Scots*, his Proportion thereof, when divided, must amount to *L. 500*. The same would be the Case of two Adjudgers, each for *L. 1000*; and yet it will scarce be contended, that this Certainty would intitle these Adjudgers, while the Property and Valuation stood undivided, to be admitted upon the Roll of Freeholders. If this would be Law in the one Case, it must be so in the other, the Principle being the same in both.

And therefore the Petitioners do humbly submit it to your Lordships, that the Freeholders of this County did wrong, when, at the last *Michaelmas* Meeting, they admitted Capt. *Pollock* upon the Roll of Freeholders for that County.

Burgh of Paisley and its Delegate.

The next Object of this Complaint is the Burgh of *Paisley*, and its Delegate, which stands in a very particular Situation.

This Borough of *Paisley*, which is no other than a Burgh of Barony, is possessed of Property-lands within the County of *Renfrew*, of considerable Value; so that, did these Lands belong to any single Person, there could be no doubt of its being a proper Qualification for an Inrolment among the Freeholders of that County. But that a Body politic and corporate, such as this Burgh of Barony, should be intitled to the legal Character of a Freeholder in Matters relating to the Election of Members of Parliament, and as such to be admitted upon the Roll of Freeholders of any County in *Scotland*, is to your Petitioners quite incomprehensible, as repugnant to the whole Spirit of the Election-laws.

But in fact it so happened, that a Delegate occasionally chosen by this Borough as their Representative, has, for a long Course of Years, been admitted as a constituent Member in all the

the Meetings of Freeholders of said Country, and to vote in all Questions at Elections or *Michaelmas* Meetings.

By the Act of the 16th of the King, it was made lawful for any Freeholder standing upon the Roll last made up, to apply by summary Complaint to the Court of Session, at any Time before the 1st of *December* 1743, and thereby to object to the Title of any Person who stood upon the Roll last made up.

A Complaint was accordingly lodged against the Town of *Paisley*, for having its Delegate struck off the Roll of Freeholders. But as said Complaint had only been executed against the Magistrates, and not against the whole Members of Council, it was dismissed by the Lord *Arniston* Ordinary, upon account of that Informality: And as the Time was then elapsed within which these summary Complaints were allowed to be brought against the Persons then standing upon the Roll, no new Complaint was attempted; and Matters went on upon the same Footing as formerly.

The Magistrates of this Borough, at the last general Election in the 1754, made choice of *William Caldwell* for their Delegate, who was present, and voted for Mr *Muir* at said Election.

But, before the last *Michaelmas* Meeting, it was thought proper to chuse a new Delegate, or Representative, viz. Bailie *Robert Fulton* Merchant in *Paisley*; and who was accordingly admitted and received to be a constituent Member of the last *Michaelmas* Meeting of the Freeholders of that County: Nor was any Objection then made to his being admitted, and acting in that Character and Capacity.

But as by the same Statute of the 16th of the King, it is made lawful for any Freeholder standing upon the Roll, whether present or not at such *Michaelmas* Meeting, who apprehends that the Title of any Person admitted to said Roll is liable to Objection, to apply to your Lordships, by summary Complaint, within four calendar Months, to be heard and determined in Manner thereby directed; your Petitioners, not from

any Motive of Ill-will to this Borough, whose Prosperity they most sincerely wish, but from the Duty they owe to their own Interest, as Freeholders of this County, and that of the whole other Freeholders, whose Rights and Privileges are invaded by this Incroachment, take the Liberty to complain thereof to your Lordships.

And, in the Petitioners humble Apprehension, the Objection is so clearly founded, both in the Words and Spirit of the whole Election-laws, that they are at a Loss to conceive, what Arguments can be pleaded in support of such an anomolous Right.

Bodies-corporate, such as this Borough of *Paisley*, cannot act in Person. The Magistrates and Council are but the Representatives of the Borough: The Town's Property does not vest in them, but in the Community or Body-politic, *qua* such; and the Delegate by them chosen is a subordinate Representative of the Borough: And as no other Freeholder can be admitted to act by Proxy or Delegation, it does not occur, how this should be competent to any Corporation. He cannot take the Oath of Possession, which must be swore in the identical Words prescribed by the Act of the 7th of the King, *viz.*

“ That the Lands and Estate of _____ for which
 “ I claim a Right to vote, &c. is actually in my Possession,
 “ and do really and truly belong to me, and is my own proper
 “ Estate, and is not conveyed to me in Trust, or for or in be-
 “ half of any other Person whatsoever,” &c.

Words cannot be more express, to show the Sense and Understanding of the Legislature, that the Party claiming to be inrolled, or to vote, must be possessed of such an Estate, in his own Right, as the Law requires, for the Qualification of any Freeholder to act in the Premises; and that he must also be in possession of said Estate, for his own Use and Behoof only.

None of these Particulars can with Truth be alledged, as to any such Estate belonging in Property to the Borough, even by the Magistrates and Council, as the Representatives of the Borough;

rough ; far less by the Delegate, the subordinate Proxy or Representative of the Borough.

And therefore, as this Borough, in the View of the last *Michaelmas* Meeting, did make choice of the said Bailie *Robert Fulton* to be their Delegate or Representative ; and who was accordingly admitted and received to be a constituent Member of said Meeting, and to act and vote in all the Matters and Business of that Day ; the Petitioners are advised, that it is competent for them, as constituent Members of said Meeting, and as standing upon the Roll of Freeholders of said County, to complain thereof to your Lordships, and to insist, that the Borough of *Paisley*, and their Delegate, should be struck off the Roll of said Freeholders now and in all Time coming.

May it therefore please your Lordships, to grant Warrant for serving this Complaint upon the said Capt. John Pollock, at the Market-cross of Edinburgh, Pier and Shore of Leith, in respect of his being now out of the Country ; or in such other Form and Manner as to your Lordships shall seem proper ; and upon the Magistrates and Town-council of Paisley, and upon the said Bailie Robert Fulton, their Delegate ; and to ordain them to put in their Answers thereto within thirty Days after Service ; and upon the Merits of the Complaint itself, to find, that the said Capt. John Pollock, and the said Borough of Paisley, neither by themselves, nor their Delegate, nor the said Bailie Robert Fulton, as the Delegate of said Burgh, are intitled to stand upon the Roll of Freeholders of said County ; and therefore to ordain their Names to be struck out therefrom ; and to give the necessary Directions for carrying such Order into immediate Execution.

According to Justice, &c.

ALEX. LOCKHART.

1. Feb: 1760

W. Stewart mentioned the Case of Blackmannan
when the vote of that burgh was cast
Prestongrange on the general Law the vote not good, but
the town of Paisley in a particular case, then appears
to be in possession of this peculiar right. & by the Decision
of Parliament in the case of this Burgh 1703.

The objection made in the 1743. determined the question
in favour of the Burgh
Pres^t That objection was cast on a no process not on this
right
Found in the clause of ^{in the act 16. of 1743} ~~the Burgh~~ ^{of 1743} that no
body Corporate can have a vote in a County.

Alenore a Body Corporate have no right to be on
the roll

Coalston But if the Possession is insisted on let this Burgh appear
all our acts contradictory to this claim. the Delegates
of the town cannot take the oath required by Law
Bodies Corporate & Peers not supposed to be entitled
to be on the Roll
40 years being on the roll does not entitle to enroll
again on the roll

The Lords Dismiss the Complaint